

\*\*E-filed 2/8/07\*\*

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6 Attorneys for Cross-Defendant  
 7 SIGNS HAWAII

8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**

11 MICHAEL ARBSLAND,

12 Plaintiff,

13 v.

14 SOUTHWEST SIGNS, THE HOME  
 15 DEPOT, INC.; AND DOES 1-100,

16 Defendants.

17 SOUTHWEST SIGNS, LLC,

18 Cross-Complainant,

19 v.

20 THE HOME DEPOT, SIGNS HAWAII,  
 21 SIGN ART, L. MORIGUCHI, INC.,  
 22 AND DOES 1 through 50, inclusive,

23 Cross-Defendants.

Case No. C06-04191 PVT

**STIPULATION TO CONTINUE CASE  
 MANAGEMENT CONFERENCE;  
 [PROPOSED] ORDER THEREON**

Scheduled Date of Hearing:

Date: March 2, 2007

Time: 10:30 a.m.

Dept.: Courtroom No, 3, 5<sup>th</sup> Floor

Proposed Date of Hearing:

Date: April 27, 2007

Time: 10:30 a.m.

Dept.: Courtroom No, 3, 5<sup>th</sup> Floor

[Concurrently filed with Declaration of  
 Elizabeth A. Sullivan]

24 IT IS HEREBY STIPULATED by and between plaintiff Michael Arbsland,  
 25 defendant and cross-complainant Southwest Signs, LLC, cross-defendant L. Moriguchi,  
 26 Inc. dba Sign Art and cross-defendant Signs Hawaii that the case management  
 27 conference currently scheduled for Friday, March 2, 2007 at 10:30 a.m. in Courtroom  
 28 No. 3, 5<sup>th</sup> floor, in the above-entitled court shall be continued to Friday, April 27, 2007

1 at 10:30 a.m. in Courtroom No. 3, 5<sup>th</sup> floor, in the above-entitled court, located at 280  
2 South First Street; San Jose, CA 95113-3099.

3 Good cause exists for this continuance as follows:

4 1. Plaintiff was injured on October 1, 2003 after falling off a ladder while  
5 installing a sign at Home Depot in Hawaii. After he was injured, he immediately sought  
6 and received medical attention from various Hawaiian medical providers. Over two  
7 years after being injured – and after receiving medical attention and a workers  
8 compensation award – plaintiff filed the instant action on July 6, 2006. The records  
9 of his claim for worker's compensation benefits as well as his treatment are contained in  
10 the files of the state agency charged with providing him compensation for his injuries,  
11 i.e. the Hawaii Department of Labor and Industrial Relations and the insurance company  
12 of his employer who paid for his medical benefits, i.e., Hawaiian Employers' Mutual  
13 Insurance Company (HEMIC).

14 2. In addition to the plaintiff's injuries, although the statute of limitations  
15 governing personal injury actions is two years in Hawaii (as well as California), Signs  
16 Hawaii believes plaintiff seeks to avoid the statutory bar by asserting that he had an  
17 insufficient mental capacity to enable him to file the pending action. In sum, in addition  
18 to his physical injuries, Arbsland has cast into controversy his ability to comprehend and  
19 understand the fact that he was injured and that he needed to file a legal action to protect  
20 his rights.

21 3. To test whether the foregoing factual contention has any basis, defendant  
22 Signs Hawaii sought to obtain information by serving subpoenas for records in the  
23 possession of Hawaii Department of Labor and Industrial Relations and HEMIC, the  
24 workers compensation carrier for Arbsland's employer. These were served on those  
25 entities respectively on January 8, 2007. Each of those entities took the position that  
26 under Hawaiian law, regardless of a service of a federal subpoena upon them, they are  
27 required to obtain the affirmative consent of the injured employee to consent to  
28 producing their respective records. In the alternative, to produce his records, they have

1 indicated they would comply with an order issued by this court.

2       4. Counsel for Signs Hawaii various attempts to telephone plaintiff's counsel,  
3 Mr. Michael M. Shea, Jr., to request him to provide Mr. Arbsland's consent to production  
4 of the foregoing records were ineffective; counsel did not respond to the request. Thus,  
5 based upon the agreement by each these entities to comply with an order of this court,  
6 defendant Signs Hawaii now requests this court to order respectively, the Hawaii  
7 Department of Labor and Industrial Relations and HEMIC to produce the various records  
8 of plaintiff for inspection and copying.

9       5. The date on which Signs Hawaii's responsive pleading to Southwest Signs'  
10 cross-complaint was due was February 2, 2007. Pursuant to a stipulation between the  
11 parties, however, the responsive pleading is now due on April 26.

12       6. In the interests of efficient administration of justice, the parties request this  
13 court to continue the case management conference until after Signs Hawaii's responsive  
14 pleading is due, i.e., until April 27 or as soon after as is convenient for the court. In this  
15 way, the court will not waste precious resources on a case which Signs Hawaii believes  
16 will be disposed of by way of a motion to dismiss or alternatively, by a motion to transfer  
17 pursuant to 28 U.S.C. § 1404(a).

18       7. The concurrently filed declaration of Elizabeth A. Sullivan sets forth the  
19 reasons why counsel for plaintiff has failed to execute the stipulation – Signs Hawaii's  
20 counsel has attempted no less than 10 times to contact plaintiff's counsel, Michael Shea  
21 Jr., to obtain his client's authorization to release the records and to sign this stipulation.  
22 Despite leaving messages with Mr. Shea's secretary as well as voicemails, Mr. Shea has  
23 failed to return a single telephone call. Accordingly, it has been impossible to contact  
24       ///  
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26       ///  
27       ///  
28       ///

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Los Angeles, California 90071

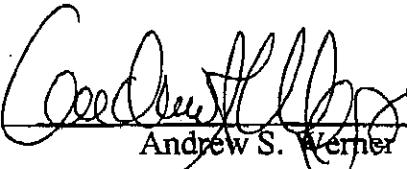
1 counsel - much less obtain his signature to this stipulation.

2 IT IS SO STIPULATED.

3  
4 DATED: February \_\_\_, 2007 SHEA & SHEA  
5 MICHAEL M. SHEA, JR.  
6

7 By: \_\_\_\_\_  
8 Michael M. Shea, Jr.

9 DATED: February 5, 2007 CESARI, WERNER AND MORIARTY  
10 DENNIS F. MORIARTY  
11 ANDREW S. WERNER  
JOSE A. MONTALVO

12 By:   
Andrew S. Werner

13  
14 DATED: February \_\_\_, 2007 Attorneys for Defendant and Cross-Complainant  
15 Southwest Signs, LLC

16 DATED: LA PLANTE, SPINELLI & DONALD  
17 DOMINIC D. SPINELLI

18  
19 By: \_\_\_\_\_  
20 Dominic D. Spinelli

21  
22 Attorneys for Cross-Defendant L. Moriguchi,  
Inc., dba Sign Art

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1 counsel – much less obtain his signature to this stipulation.  
2 IT IS SO STIPULATED.

3  
4 DATED: February \_\_\_, 2007

SHEA & SHEA  
MICHAEL M. SHEA, JR.

5  
6  
7 By: \_\_\_\_\_  
8 Michael M. Shea, Jr.

9 DATED: February \_\_\_, 2007

10 CESARI, WERNER AND MORIARTY  
11 DENNIS F. MORIARTY  
ANDREW S. WERNER  
JOSE A. MONTALVO

12  
13 By: \_\_\_\_\_  
14 Andrew S. Werner

15 DATED: February \_\_\_, 2007

16 Attorneys for Defendant and Cross-Complainant  
17 Southwest Signs, LLC

18 DATED: 2-5-07

19 LA PLANTE, SPINELLI & DONALD  
20 DOMINIC D. SPINELLI

21 By: Dominic D. Spinelli  
22 Dominic D. Spinelli

23 Attorneys for Cross-Defendant L. Moriguchi,  
24 Inc., dba Sign Art

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4  
STIPULATION TO CONTINUE CASE MANAGEMENT CONFERENCE; [PROPOSED] ORDER  
007-02-02 Stipulation to Continue CMC.wpd

1 DATED: February 5, 2007

JENKINS GOODMAN NAUMAN &  
HAMILTON LLP  
JOSHUA S. GOODMAN

5 By: PMM L. Riddin FOR  
6 Joshua S. Goodman

7 Attorneys for The Home Depot

10 DATED: February 2, 2007

11 ADLER LAW GROUP  
12 ERWIN E. ADLER  
ELIZABETH A. SULLIVAN

15 By: EAS  
16 Elizabeth A. Sullivan

17 Attorneys for Signs Hawaii

19 IT IS SO ORDERED.

21 DATED: 2/7/07

25   
26 Hon. D. Jeremy Fogel  
27 Judge of the United States District Court  
28 for the Northern District of California

5

STIPULATION TO CONTINUE CASE MANAGEMENT CONFERENCE; [PROPOSED] ORDER

1 DATED: February \_\_, 2007

JENKINS GOODMAN NAUMAN &  
HAMILTON LLP  
JOSHUA S. GOODMAN

3

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5

By: \_\_\_\_\_  
Joshua S. Goodman

6

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10

DATED: February 2, 2007

ADLER LAW GROUP  
ERWIN E. ADLER  
ELIZABETH A. SULLIVAN

11

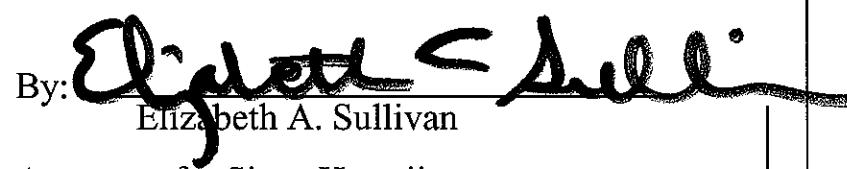
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By:   
Elizabeth A. Sullivan

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Attorneys for Signs Hawaii

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IT IS SO ORDERED.

21

22

DATED: \_\_\_\_\_

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Hon. D. Jeremy Fogel

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**DECLARATION OF ELIZABETH A. SULLIVAN**

I, Elizabeth A. Sullivan, hereby declare:

1. I am an attorney licensed to practice in the State of California and am an attorney with the Adler Law Group, attorneys of record for plaintiff Signs Hawaii. I have personal knowledge of the facts stated herein and, if called as a witness, could and would competently testify thereto.

***The Interests of Justice Favor Granting Signs Hawaii Access to Mr. Arbsland's Voluminous Workers' Compensation Claim Files to Test the Veracity of His Claim Mental Incompetence Excuses His Failure to File Within the Limitation Period***

2. On July 6, 2006, Plaintiff Michael Arbsland sued Southwest Signs and Home Depot for personal injuries resulting from his fall *over two years prior*, i.e., on October 10, 2003, from a ladder while installing a sign at Home Depot in Li Hue, Hawaii. (Southwest Signs, in turn, has cross-complained against Signs Hawaii.) Shortly after the accident, Arbsland filed a claim for workers' compensation benefits which involved the creation of records by the Hawaiian agency charged with compensating injured workers – the Hawaii Department of Labor and Industrial Relations ("Department of Labor"). Hawaii Employers Mutual Insurance Company ("HEMIC") is his employers' workers' compensation carrier and thus also has records. These records are necessary for Signs Hawaii to determine whether Arbsland did, indeed, fail to comprehend he was injured that entire time and thus was not aware he needed to vindicate his legal rights within the appropriate time limitation imposed by law or, whether he, alternatively presents this court with a baseless tolling argument to justify his failure to institute the action in a timely manner and, simultaneously, to attempts to congest this court's docket by reviving a long-dead claim.

***Signs Hawaii Has Requested – and Received for Good Cause – Two Previous Extensions of Time from Southwest Signs***

3. Signs Hawaii has requested – and received – from Southwest Signs (through its counsel Andrew Werner) – two previous extensions of time, both of which, as explained in further detail below, were not only warranted but also necessary. With

1 respect to the first extension of time, Signs Hawaii notified my colleague, Erwin E.  
2 Adler, and I, of our offices, of the cross-complaint on December 13, 2006, only one week  
3 prior to the deadline to file a responsive pleading. From the inception of this case, we  
4 planned to file a motion to dismiss the cross-complaint on the grounds Mr. Arbland's  
5 claim was barred by the statute of limitations. We also planned to file, alternatively, a  
6 motion to transfer venue under 28 U.S.C. § 1404(a) given the accident occurred in  
7 Hawaii and likely the documents, witnesses, and evidence would all be located in  
8 Hawaii. We had not yet, however, received the client's file; nor did we have the identity  
9 of witnesses from whom to obtain documents and declarations. Southwest Signs  
10 therefore stipulated – and this court ordered based on this stipulation – that Signs Hawaii  
11 would have from December 20, 2006 until January 19, 2007 to file any responsive  
12 pleading to the cross-complaint.

13       4. As set in further detail below, on January 5, 2007, it became apparent given  
14 the lack of cooperation from those from whom we sought records that Signs Hawaii  
15 needed another extension of time to respond to the complaint. At first, Mr. Werner  
16 refused to provide the extension of time, but ultimately agreed to extend the time for  
17 Signs Hawaii to respond to Southwest Sign's cross-compliant, from January 19, 2007 to  
18 February 7, 2007. As set forth below, Signs Hawaii needs a further extension of time  
19 due to the nonresponsiveness of subpoenaed parties and their reluctance to produce  
20 records absent a court order subject to a protective order.

21       5. Ample good cause exists for this motion. As stated in further detail below,  
22 I have made no less than 30 attempts to obtain the records from plaintiff's counsel,  
23 plaintiff's workers' compensation carrier, and the Hawaii Department of Labor. After  
24 the parties refused to respond to subpoenas for the records, our offices attempted to seek  
25 the records subject to a protective order. Notwithstanding my diligence and acting in  
26 good faith, the passage of time without any response from either party necessitates an  
27 extension of time to receive and analyze the records which will form the basis of Signs  
28 Hawaii's motion to dismiss or, in the alternative, motion to transfer venue.

1  
**Nearly Eight Weeks of Attempts to Obtain Records From HEMIC – Even Pursuant  
 2 to a Subpoena – Have Not Produced the Necessary Records**

3       6. Shortly after receiving word from the client of the cross-complaint  
 4 against it, i.e., in mid December 2006, I learned Hawaiian Employers Mutual  
 5 Insurance Company (“HEMIC”) was the workers’ compensation carrier for plaintiff  
 6 Arbsland. I word left with Ms. Sandra Hoyle, the adjustor for Mr. Arbsland’s claim,  
 7 on December 17. She did not return my telephone call. I finally reached Ms. Hoyle  
 8 on December 27, 2005. (I later learned HEMIC had difficulty with its telephone  
 9 system at that time, and this explains why I was unable to reach her within that 10-  
 10 day period.) She agreed to send us Mr. Arbsland’s public file provided I send a  
 11 written request to her attention. I did so on that same day. Having not received word  
 12 from Ms. Hoyle on January 3, 2007, I attempted to contact her. I kept calling  
 13 HEMIC’s main number, but the receptionist could not hear me and hung up. This  
 14 happened three to four times. Finally, I was able to speak with the receptionist, who  
 15 informed me their telephone lines were not working and that they had experienced  
 16 similar problems earlier in the month. The receptionist instructed me to contact Ms.  
 17 Hoyle the next day since I could not leave a voicemail for her. Concerned with the  
 18 difficulty I had reaching Ms. Hoyle by telephone, I was concerned perhaps she did  
 19 not receive the written authorization I sent via facsimile on December 27. On that  
 20 same day, i.e., January 3, 2007, I thus re-sent my letter dated December 27 which  
 21 contained my written request for Mr. Absland’s public file. On January 5, 2007, I left  
 22 Ms. Hoyle a message inquiring into the status of the records. Without a response, it  
 23 became plain I would need to request an extension of time from Mr. Werner and did  
 24 so. I also served a subpoena to HEMIC on January 8 given Ms. Hoyle was  
 25 unresponsive to the written request as promised. True and correct copies of the  
 26 subpoenas served on HEMIC and the Department of Labor are attached as Exhibit A.

27       7. On January 9, I again attempted to contact Ms. Hoyle and was informed  
 28 she was “off the island,” i.e., out of the office. I spoke with another adjustor, David

1 Suganuma, who checked HEMIC's files and verified HEMIC had, indeed, received  
 2 the subpoena. He informed me Ms. Hoyle would contact me given she was the  
 3 adjustor on the file. She did not do so. On January 9, 2007, I received a letter from  
 4 Ms. Hoyle stating HEMIC would not produce the records absent an authorization  
 5 from Mr. Arbsland – completely contrary to the representations she made to me by  
 6 telephone and on which I relied. A true and correct copy of this letter is attached as  
 7 Exhibit B.

8       8. Throughout January, I made numerous attempts to contact both Ms.  
 9 Hoyle as well as Ms. Stacy Miller, Ms. Hoyle's supervisor. I also requested to speak  
 10 with in-house counsel. My calls to various HEMIC personnel went unanswered.  
 11 Finally, on January 24, 2007, I reached Colton Chun, in-house counsel for HEMIC.  
 12 He explained to me the reluctance of HEMIC to produce the documents  
 13 notwithstanding the mandatory requirements of Rule 45 stemmed from the recent  
 14 decision of the Supreme Court of Hawaii, in *Brende v. Hara*, 2006 Haw. LEXIS 616  
 15 (2006). Based on his reading of *Brende*, he believed the documents should not be  
 16 produced without authorization from Mr. Arbsland. I indicated that although I  
 17 believed the federal subpoena would require production of these records, Signs had  
 18 no objection to having an order to compel entered which would include a provision  
 19 containing the language from *Brende* — stating Signs Hawaii would not disseminate  
 20 the information or otherwise use it beyond the purposes of this litigation – without an  
 21 authorization from Mr. Arbsland. I was happy to do that in order to allay HEMIC's  
 22 concerns. We ended our telephone call with a mutual desire to work on the protective  
 23 order and subsequently produce the documents subject to a protective order.

24       9. I attempted various times to contact in-house counsel for HEMIC, who I  
 25 learned is Stacey Miller, to no avail. Finally, on the afternoon of February 2, 2007,  
 26 Patricia Eads, senior staff attorney for HEMIC, telephoned me to state Ms. Miller was  
 27 on vacation until February 12 and that she was handling the matter in Ms. Miller's  
 28 absence. Ms. Eads reiterated HEMIC's concern with the holding of *Brende*. She,

1 however, indicated HEMIC would comply with an order issued by any court,  
 2 including the federal District Court for the Northern District of California. I sent her  
 3 a letter— which she signed – confirming our agreement dated February 2, 2007, a true  
 4 and correct copy of which is attached as Exhibit C.

5 ***I Made Numerous Telephone Calls to Mr. Absland's Counsel to Seek to Obtain His  
 6 Authorization to Release His Medical Records. Counsel Failed to Return My Half-  
 7 Dozen Calls, and I was Thus Unable to Seek – Much Less Obtain – Mr. Absland's  
 8 Consent.***

9 10. To attempt to obtain Mr. Arbsland's consent as HEMIC initially required,  
 10 I attempted to reach his counsel, i.e., Mr. Michael M. Shea, Jr. I telephoned him no  
 11 less than ten times, i.e., January 9, January 10, and January 11, 2007. On each  
 12 occasion, I was unable to speak to Mr. Shea. Each time, I was either told by his  
 13 secretary that "Junior" was unavailable and was either sent directly into voicemail, or  
 14 the secretary personally wrote a message for Mr. Shea. Although I impressed upon  
 15 Mr Shea both by voicemail and directly to his secretary the importance of the matter  
 16 we needed to discuss with respect to the Arbsland matter, he never once attempted to  
 17 return my numerous telephone calls. As a result, I was unable to obtain Mr.  
 18 Arbsland's voluntary consent to production of his files notwithstanding repeated  
 19 efforts to do so.

20 11. I have also attempted to contact Mr. Shea various times to obtain his  
 21 signature on the stipulation to continue the case management conference – also to no  
 22 avail. For example, as late as possible, i.e., on February 2, 2007, the business day  
 23 prior to filing the stipulation to extend the case management conference, I tried two  
 24 times to contact Mr. Shea and left voicemails for him setting forth the urgency with  
 25 which I needed to speak with him to discuss the proceedings in this case and obtain  
 26 his cooperation on the stipulation. *Mr. Shea never returned these telephone calls,*  
*either.* I thus am unable to obtain his signature on the stipulation to extend the CMC  
 notwithstanding my diligence to do so.

27 ***Nearly Eight Weeks of Attempts to Obtain Records From Hawaii Department of  
 28 Labor – Even Pursuant to a Subpoena – Have Not Produced the Necessary Records***

1           12. Simultaneously, I attempted to obtain the workers' compensation records  
2 from the Hawaii Department of Labor and Industrial Relations ("Department of  
3 Labor"). We served the Department of Labor with a subpoena the same day we served  
4 HEMIC, i.e., on January 8, 2007. On January 9, I received word from Mr. Nate  
5 Murakami of the Department of Labor it was denying our subpoena because,  
6 according to him, we either needed the "permission" of Mr. Arbsland or a "judge-  
7 issued" subpoena. I subsequently returned his call and requested to speak with his  
8 supervisor. I then spoke with Royden Koito, Mr. Murakami's supervisor, and  
9 discussed with him the validity of an attorney-issued subpoena and thus, the validity  
10 of the subpoena served on him. He expressed a desire to contact general counsel and  
11 stated he would return my telephone call.

12           13. Mr. Koito telephoned me late in the afternoon that same day, i.e.,  
13 January 9, 2007. He stated he had consulted with the Deputy Attorney General  
14 assigned to the Labor Department, Ms. Lum, concerning the subpoena. My notes of  
15 this conversation indicate the following verbatim message from Mr. Koito: They  
16 "conced[ed] that the subpoena appear[ed] valid and consistent with the federal rules."  
17 They, however, "would prefer a consent from Mr. Arbsland due to relatively new and  
18 evolving privacy laws." I discussed with Mr. Koito why I was forced to contact the  
19 Department of Labor: Mr. Arbsland's consent was not likely to be obtained given we  
20 are adversaries to Mr. Arbsland (and that his consent may cast doubt upon his claims  
21 of mental incapacity and thus his excuse for failing to file a timely claim), but that I  
22 had been consistently trying to contact Mr. Arbsland's attorney to no avail to obtain  
23 his consent. Mr. Koito then indicated that the State would likely be filing a motion  
24 for protective order - which usually results in an order permitting records – to provide  
25 the protection the State sought. I then requested Mr. Koito to have the Attorney  
26 General, Ms. Lum, contact me in order to hopefully reach agreement which would  
27 satisfy the State's concerns to protect Mr. Arbsland's privacy and simultaneously  
28

1 obtain for us the subpoenaed records.

2       14. I (along with colleague Erwin Adler) was finally able to speak with  
3 Francis Lum, Esq., the Deputy Attorney General assigned to that Department. I  
4 learned similar to HEMIC, the Department was concerned with producing the  
5 documents despite the mandatory requirements of Rule 45 on the basis that the  
6 Hawaiian Supreme Court had indicated in a recent decision, i.e., *Brende v. Hara*,  
7 2006 Haw. LEXIS 616 (2006) had held that such documents should not be produced  
8 without a protective order precluding further dissemination of the documents. We  
9 indicated that although we believed the federal subpoena would require production of  
10 these records, Signs Hawaii had no objection to having an order to compel entered  
11 which would include such a provision. In sum, Ms. Lum indicated the Department  
12 would comply with an order issued by any court, including the federal District Court  
13 for the Northern District of California. She forwarded to Mr. Adler a letter  
14 confirming her agreement dated January 29, 2007, a true and correct copy of which is  
15 attached as Exhibit D.

16 ***The Records Are Voluminous; Signs Hawaii Needs Adequate Time to Analyze  
17 Them Before Filing the Motions to Dismiss and to Transfer Venue***

18       15. On January 9, 2007, Mr. Muragami of the Department of Labor  
19 specifically telephoned me to indicate he had located the records and “warned” me of  
20 the voluminous nature of these documents. He stated the records comprised of no  
21 less than six to seven file boxes. He anticipates it will take no less than three eight-  
22 hour days to copy these documents given they each need to be photocopied  
23 individually and cannot be copied by way of a feeder. I anticipate, notwithstanding  
24 the cooperative nature of Mr. Muragami and his willingness to respond to the  
25 subpoena once he is satisfied the Department’s concerns are allayed, it will take quite  
26 some time for the Department of Labor to find the time to photocopy the records and  
27 then send them to us. HEMIC has not indicated to us the nature of their files, but I  
28 anticipate their files will be similar to those of the Department of Labor – quite large

1 and time-intensive for HEMIC to copy them – and ultimately for us to analyze these  
 2 files.

3       16. As this court can plainly determine from my declaration, I have had great  
 4 difficulty obtaining these records notwithstanding devoting considerable time  
 5 consistently to this endeavor throughout these past eight weeks. I therefore request  
 6 this court to order HEMIC and the Hawaii Department of Labor to promptly reply to  
 7 the subpoenas. I further request Signs Hawaii be given adequate time to analyze  
 8 these voluminous documents such that it can file a meaningful motion to dismiss with  
 9 this court in order to rid this congested docket of a stale claim.

10      17. In that regard, I request the time by which Signs Hawaii be ordered to  
 11 respond to the cross-complaint be calculated based on the latter of the dates on which  
 12 Signs Hawaii or HEMIC respond. I request Signs Hawaii receive 30 days from  
 13 receipt of the latter response to analyze a conservative estimate of no less than 10 file  
 14 boxes of medical records, conduct legal research regarding both a motion to dismiss  
 15 and a motion to transfer venue, obtain declarations from the afore-mentioned  
 16 individuals who are plainly difficult to contact, and, finally, provide this court with  
 17 cogent legal arguments contained in both motions.

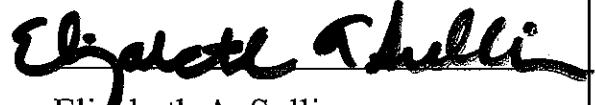
18 ***A Substantial Injustice Would Result Were Signs Hawaii Be Unable to Obtain An  
 19 Extension of Time: This Court – and Defendants – Would Be Burdened Litigating  
 a Stale Claim Already Barred by the Statute of Limitations. Conversely, An  
 20 Extension Would Not Burden This Case Given It is in Its Early Stages***

21      18. Signs Hawaii would be substantially harmed and severely prejudiced  
 22 should it not be able to analyze the documents and file a motion to dismiss based on  
 23 the lapsing of the statute of limitations as well as, in the alternative, a motion to  
 24 transfer venue to Hawaii. It would be forced to engage in costly litigation on a claim  
 25 it suspects to be completely meritless on the basis of a simple, discrete issue – the  
 26 lapse of the limitations period. The other parties will not be prejudiced given the  
 27 proceeding is in its early stages. Finally, the interests of justice are served in that this  
 28 court will likely obtain relief from an already congested docket upon ruling this claim

1 is barred by the statute of limitations, or, in the alternative, is best litigated in Hawaii  
2 where all evidence, records, and witnesses are located.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on February 2, 2007 at Los Angeles, California.

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7 Elizabeth A. Sullivan  
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ADLER LAW GROUP  
350 So. Figueroa St., Suite 557  
Los Angeles, California 90071

**PROOF OF SERVICE**

SERVED	DATE 1-8-07	PLACE 1001 BISHOP ST. PALAUA TOWER STE. 1000 HONOLULU, HI 96813
SERVED ON (PRINT NAME) <b>HAWAII EMPLOYERS MUTUAL INSURANCE COMPANY - VP STACEY MILLER</b>	MANNER OF SERVICE <b>PERSONALLY HAND DELIVERED</b>	
SERVED BY (PRINT NAME) <b>NEAL F. YODA</b>	TITLE <b>PRIVATE INVESTIGATOR - PROCESS SERVER</b>	

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 1-8-07  
DATE

Neal F. Yoda

SIGNATURE OF SERVER

95-1023 DELIKE ST.

ADDRESS OF SERVER

MILILANI, HI 96789

**Rule 45, Federal Rules of Civil Procedure, Parts C & D:****(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to comply production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance,
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to

the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or the demanding party to contest the claim.

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

**(B) If a subpoena**

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

*EXHIBIT A*

*15*

Issued by the

## UNITED STATES DISTRICT COURT

Northern DISTRICT OF California

MICHAEL ARBSLAND

## SUBPOENA IN A CIVIL CASE

v.  
 SOUTHWEST SIGNS, THE HOME DEPOT, INC.  
 et al.

Case Number:<sup>1</sup> C06-04191 PVT

*Star Harrison Muller* VP Legal  
 TO: Custodian of Records, Hawaii Employers Mutual Insurance Company, 1001  
 Bishop Street, Suite 100, Honolulu, HI 96813

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Your entire file concerning Michael Arbsland regarding date of injury 10/1/03. Please see attachment A for list of documents you are required to produce and permit inspection and copying.

PLACE	DATE AND TIME
Hawaii Employers Mutual Insurance Company 1001 Bishop Street, Suite 100 Honolulu, HI 96813	January 18, 2007; 10:00 a.m.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
<i>Elizabeth A. Sullivan - Attorney for cross-defendant Signs Master</i>	<i>January 5 2007</i>

ISSUING OFFICER'S NAME ADDRESS AND TELEPHONE NUMBER  
 ELIZABETH A. SULLIVAN, ESQ.; ADLER LAW GROUP, 350 S. FIGUEROA ST., SUITE 557;  
 LOS ANGELES, CA 90071; (213) 893-3900

(See Rule 45, Federal Rules of Civil Procedure, parts C &amp; D on reverse)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

**ATTACHMENT A**

The Workers' Compensation Claim File and any DOCUMENTS in your possession regarding Michael Arbsland ("Arbsland"), Hawaii Employers Mutual Insurance Company File No. HEM 0013428, date of injury October 1, 2003.

The term "DOCUMENTS" includes any writing, any matter or tangible thing containing a recording, handwriting, typewriting, printing, photograph, image, sound or any other means of recording upon any tangible thing any form of communication including but not limited to written or electronic materials, letters, words, pictures, correspondence, notes, memoranda, contracts, summaries, transcripts, diagrams, graphs, written documents, audio-tape recordings, video tape recordings, DVDs, CDs, photographs, electronic recordings, mobile digital communications and computer-stored data of any type, electronic mail, whether in the original or draft form, however produced or reproduced, whether sent or received or neither, including all copies thereof which are different in any way from the original, and any other thing or matter which constitutes a "document" under Federal rule of Civil Procedure 34.

You are to produce the following:

1. All DOCUMENTS regarding the incident causing the injury on which Arbsland based his workers' compensation claim, including, but not limited to, documents describing the date of injury;
2. All DOCUMENTS regarding physical injuries to Arbsland, including, but not limited to, head trauma, cognitive impairment, and/or memory impairment, if any;
3. All DOCUMENTS regarding Arbsland's history of physical injury or disease, including, but not limited to, head trauma, cognitive impairment, and/or memory impairment, if any;
4. All DOCUMENTS regarding Arbsland's pertinent psychological or psychiatric history including, but not limited to, head trauma, cognitive impairment, and/or memory impairment, if any;
5. All DOCUMENTS regarding Arbsland's complaints regarding physical injuries, disabilities, limitations, or impairment, including, but not limited to, head trauma, cognitive impairment, and/or memory impairment, if any;
6. All DOCUMENTS regarding Arbsland's history and complaints regarding mental injuries, disabilities, limitations, or impairment, including, but not limited to, head trauma, cognitive impairment,

and/or memory impairment, if any;

7. All DOCUMENTS regarding Arbsland's dates of physical and/or mental examinations, if any;
8. All DOCUMENTS regarding health care providers' findings on examination, if any;
9. All DOCUMENTS regarding Arbsland's impairment of physical or mental function, if any;
10. All DOCUMENTS regarding restrictions on Arbsland's physical activities, if any;
11. All DOCUMENTS regarding any award of workers' compensation benefits to Arbsland;
12. All DOCUMENTS regarding restrictions on Arbsland's mental activities, if any;
13. All DOCUMENTS regarding opinion of health care practitioner(s) whether Arbsland's physical impairment is all or in part related to the accident occurring on October 1, 2003, if any;
14. All DOCUMENTS evidencing billing for, payment by and summaries of treatment given by health practitioners to Arbsland;
15. All DOCUMENTS regarding opinion of health care practitioner(s) whether Arbsland's mental impairment is all or in part related to the accident occurring on October 1, 2003, if any;
16. Medical treatment indicated, if any; and
17. Reason(s) for findings and opinions of health care practitioner.

**PROOF OF SERVICE**

DATE

PLACE

SERVED

1-8-07

830 PUNCHBOWL ST. ROOM 209  
HONOLULU, HI 96813

SERVED ON (PRINT NAME)

COR-HAWAII DEPARTMENT OF  
LABOR AND INDUSTRIAL RELATIONS  
NATHAN MURAKAMI

MANNER OF SERVICE

PERSONALLY HAND  
DELIVERED

SERVED BY (PRINT NAME)

NEAL F. YORD

TITLE  
PRIVATE INVESTIGATOR -  
PROCESS SERVER**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

1-8-07

DATE

SIGNATURE OF SERVER

95-1023 DELIKE ST.

ADDRESS OF SERVER

MILILANI, HI 96789

## Rule 45, Federal Rules of Civil Procedure, Parts C &amp; D:

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

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(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to comply production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

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(iv) subjects a person to undue burden.

## (B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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Issued by the

**UNITED STATES DISTRICT COURT**Northern DISTRICT OF California

MICHAEL ARBSLAND

**SUBPOENA IN A CIVIL CASE**

v.  
 SOUTHWEST SIGNS, THE HOME DEPOT, INC.  
 et al.

Case Number: C06-04191 PVT

JAN - 8

A 22

*[Signature]*  
 TO: Custodian of Records, Hawaii Department of Labor and Industrial Relations,  
 Princess Ruth Keelikolani Bldg.; 830 Punchbowl Street, Room 209, Honolulu,  
 HI 96813

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

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PLACE Hawaii Department of Labor and Industrial Relations 830 Punchbowl Street, Room 209 Honolulu, HI 96813	DATE AND TIME January 18, 2007; 10:00 a.m.
--	--

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
<i>Elizabeth A. Sullivan - Attorney for cross-defendant Signs Hawaii</i>	<i>January 5, 2007</i>

ISSUING OFFICER'S NAME ADDRESS AND TELEPHONE NUMBER  
 ELIZABETH A. SULLIVAN, ESQ.; ADLER LAW GROUP; 350 S. FIGUEROA ST., SUITE 557;  
 LOS ANGELES, CA 90071; (213) 893-3900

(See Rule 45, Federal Rules of Civil Procedure, parts C &amp; D on reverse)

\* If action is pending in district other than district of issuance, state district under case number.

**ATTACHMENT A**

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3. All DOCUMENTS regarding Arbsland's history of physical injury or disease, including, but not limited to, head trauma, cognitive impairment, and/or memory impairment, if any;
4. All DOCUMENTS regarding Arbsland's pertinent psychological or psychiatric history including, but not limited to, head trauma, cognitive impairment, and/or memory impairment, if any;
5. All DOCUMENTS regarding Arbsland's complaints regarding physical injuries, disabilities, limitations, or impairment, including, but not limited to, head trauma, cognitive impairment, and/or memory impairment, if any;
6. All DOCUMENTS regarding Arbsland's history and complaints regarding mental injuries, disabilities, limitations, or impairment, including, but not limited to, head trauma, cognitive impairment, and/or memory impairment, if any;

7. All DOCUMENTS regarding Arbsland's dates of physical and/or mental examinations, if any;
8. All DOCUMENTS regarding health care providers' findings on examination, if any;
9. All DOCUMENTS regarding Arbsland's impairment of physical or mental function, if any;
10. All DOCUMENTS regarding restrictions on Arbsland's physical activities, if any;
11. All DOCUMENTS regarding any award of workers' compensation benefits to Arbsland;
12. All DOCUMENTS regarding restrictions on Arbsland's mental activities, if any;
13. All DOCUMENTS regarding opinion of health care practitioner(s) whether Arbsland's physical impairment is all or in part related to the accident occurring on October 1, 2003, if any;
14. All DOCUMENTS evidencing billing for, payment by and summaries of treatment given by health practitioners to Arbsland;
15. All DOCUMENTS regarding opinion of health care practitioner(s) whether Arbsland's mental impairment is all or in part related to the accident occurring on October 1, 2003, if any;
16. Medical treatment indicated, if any; and
17. Reason(s) for findings and opinions of health care practitioner.



January 09, 2007

Elizabeth Sullivan  
Adler Law Group  
350 South Figueroa Street, Suite 557  
Los Angeles, CA 90071

Re: Employee: Michael Arbsland  
Employer: L Moriguchi Inc  
Date of Injury: 10/01/2003  
Claim No.: HEM-0013428  
DCD File No: 40301057 (Oahu)

Dear Ms. Sullivan:

Please be advised that we are unable to fulfill your request for a copy of the workers' compensation file without a signed authorization from Mr. Arbsland.

Thank you for your attention and assistance in this matter. Should you have any questions, please do not hesitate to call me.

Sincerely,

*Sandra Hoyle*

Sandra Hoyle  
Senior Claim Specialist  
Direct Phone: (808) 524-3642 ext. 239

Exhibit B

P. O. Box 3376 Honolulu, HI 96801 Phone: (808) 52-HEMIC Fax: (808) 522-5855 [www.hemic.com](http://www.hemic.com)  
"Our Policy is Taking Care of Hawaii"

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ADLER LAW GROUP

[www.adlerlawgroup.com](http://www.adlerlawgroup.com)

February 2, 2007

VIA E-MAIL (peads@hemic.com)

Patricia Eads, Esq.  
Senior Staff Attorney  
Hawaii Employers Mutual Insurance Company  
P.O. Box 3376  
Honolulu, HI 96801

Re: *Arbsland v. Southwest Signs, et al.*  
United States District Court for the Northern District of California  
Case No. C06-04191 (PVT)  
Workers' Compensation Claim of Michael Arbsland  
Your File Number: HEM 0013428  
Date of Injury: October 1, 2003

Dear Ms. Eads:

Thank you for your telephone call of today to discuss the subpoena we issued to Hawaii Employers Mutual Insurance Company ("HEMIC") seeking its file regarding Mr. Arbsland's workers' compensation claim. I understand you are handling the *Arbsland* matter for Ms. Stacy Miller, with whom we have been speaking, while she is on vacation until February 12, 2007.

As we are aware from communications between our offices and Ms. Miller, HEMIC has requested that we obtain consent from Mr. Arbsland authorizing the release of HEMIC's files regarding his workers' compensation claim. As you explained to me, given the recent ruling of the Supreme Court of Hawai'i (*Brende v. Hara*, 2006 Haw. LEXIS 616), in an abundance of caution, HEMIC is unwilling to release those records without either consent from Mr. Arbsland or a court order given the privacy considerations regarding personal medical information.

(Continued on page 2)

Exhibit C

February 2, 2007

Page 2

You indicated to me should we seek a court order from the Northern District of California or any other district court, HEMIC will not object and will, of course, comply with the terms of the order.

I thank you again for your courtesy and prompt attention to this matter.

Sincerely,

Elizabeth C. Sullivan

Elizabeth A. Sullivan

Hawaii Employers Mutual Insurance Company agrees to the foregoing terms this Second day of February, 2007.

By:

Patricia Eads

Patricia Eads, Esq.  
Senior Staff Attorney, HEMIC

Correctly represents  
our conversation

LINDA LINGLE  
GOVERNOR



MARK J. BENNETT  
ATTORNEY GENERAL

LISA M. GINOZA  
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL  
LABOR DIVISION  
425 QUEEN STREET  
HONOLULU, HAWAII 96813  
Telephone: (808) 586-1450  
Fax: (808) 586-1376

January 29, 2007

Erwin Adler, Esq.  
Adler Law Group  
350 S. Figueroa St., Ste. 557  
Los Angeles, CA 90071

Dear Mr. Adler:

Re: Michael Arbsland vs. Southwest Signs, The Home Depot, Inc., et al.  
Civil No. C06-04191 PVT

This is a follow up to my January 11, 2007 letter to you. As I had explained to you, the Hawaii Department of Labor and Industrial Relations is unwilling to release, without a consent or court order, Mr. Arbsland's workers' compensation file due to privacy considerations because the file contains medical records. More specifically, the privacy considerations arise from Article I, section 6 of the Hawaii constitution. Of course, if the Department is ordered, by the United States District Court of the Northern District of California or other federal district court, the Department will comply with the terms of the order.

Given the recent ruling of the Supreme Court of Hawaii (*Brende v. Hara*, 2006 WL 3393604, Nov. 27, 2006, amended Jan. 25, 2007), in an abundance of caution, we request you kindly include the following language from *Brende* in the proposed court order you present to the court:

None of Mr. Arbsland's protected health information and/or medical information obtained from the Hawaii Department of Labor and Industrial Relations shall be disclosed or used for any purpose by anyone or by any entity outside of Civil No. C06-04191 PVT without Mr. Arbsland's explicit written consent thereto.

If you have any further questions, please feel free to call me.

Very truly yours,

Handwritten signature of Frances E. H. Lum  
Frances E. H. Lum  
Deputy Attorney General

c: Mr. Royden Koito

EXHIBIT D

26